

COMF AUDIT AND ORGANIZATIONAL STATUS

BACKGROUND

- ◉ Nine directors resigned on 9/17/12, leaving only the two ex-officios (COM Superintendent/President and COM Board President, who were non-voting members) as board members.
- ◉ It was necessary for the ex-officios to review thousands of pages of documents and conduct time-consuming fact finding to determine the status of COMF.
- ◉ Bank statements revealed that there were no unrestricted funds left for operations.
- ◉ All normal COMF activities have been suspended since September, 2012.

WHAT WAS DISCOVERED

- ◉ Directors and Officers insurance had been cancelled by the former COMF board. A rider remained for the resigning board members and the ex-officios.
- ◉ No COMF financial statements existed after February, 2012, when former bookkeeper was discharged.
- ◉ KPMG did not perform an audit because there were no financial statements to audit.
- ◉ Independent contractors were hired to do bookkeeping and create financial statements.

CONTINUED...

- ◉ In spite of paying \$46,163 (February 2012 through June 2012) for financial services, no COMF financial statements were produced as of 6/30/12.
- ◉ The money market fund was entirely depleted and the only funds remaining were in the investment accounts containing restricted funds.
- ◉ There was no money for operations.
- ◉ Massive overspending resulted in the use of restricted funds for unrestricted administrative purposes, leaving no unrestricted funds available.

COM HAD TO COVER CRITICAL EXPENSES

- ◉ COM has paid \$24,902 to the contractors (hired by former COMF board) to complete the COMF financial statements needed for the audit.
- ◉ Some bills incurred before 9/17/12 (date of mass resignation) had not been paid, but no new expenses except for financial accounting services have been incurred since that time.
- ◉ COM will need to be reimbursed for expenses it has covered.

SCHOLARSHIPS

- \$67,420 was distributed for scholarships last year.

OTHER ISSUES

- ◉ Eastis claim/lawsuit - wrongful termination and discrimination.
- ◉ He was seeking \$777,000. Claim recently settled. Covered by insurance. Only financial impact to COMF is \$5K deductible.
- ◉ Potential involvement of State Attorney General's Office

DETERMINING COMF'S FUTURE

- The audit has provided vital information upon which to base decisions about the future of COMF.
- Additional information will need to be obtained before final decisions can be made.

COMF STRUCTURE

- FY 11-12 adopted budget
- Revenue \$286,100
- Expense \$286,100
- Actual expenses were \$760,673
- Actual revenue was \$259,580
- Revenue comes from fees charged to donor accounts, earned interest, and fundraising

AUDIT FINDINGS

- The operating budget adopted by the former board has \$286,100 of expenses.
- Actual expenses were \$760,673
- Exceeded the approved budget by \$474,573
- Variance primarily in professional services, including management consulting, accounting, and legal expenses. \$403,362 was spent, and \$7,200 was budgeted.
- \$25,000 in unbudgeted expenses for offsite lease, moving costs, bank charges, supplies, and misc.

AUDIT

- “...The budget variances were communicated at the foundation board meetings, however, no action was taken to amend the budget...”
- “...During fiscal year 2012, the Foundation expended program funds for restricted purposes to support the operation of the Foundation...”
- Through 12/31/12, \$464,464 of restricted funds were used for unrestricted purposes.

AUDIT

- ⦿ \$3.8 million (includes a \$250,000 bequest received 2/5/13) remains in the investment accounts. This money is restricted and cannot be used for general operating.

SPECIFIC IMPACT

- ◉ Scholarships and endowed funds remain intact. \$3.8 million in investment accounts
- ◉ There are 91 donor accounts ranging in size from \$2.50 to \$988,494.
- ◉ Endowed accounts include \$79,818 Hal and Joy Mays fund for nursing program and \$988,494 R.A. Brown fund for journalism program.
- ◉ COM Program Funds of \$491,014 were entirely depleted.
- ◉ NOTE: Program Funds had been raised for specific COM programs by COM faculty and former COMF staff. COMF charged COM a fee to manage the funds.

IMPACT

- Grant funds depleted:
- MarinCares \$25,532 (ECE learning community)
- MCF \$55,240 (ESL)

IMPACT

- Massive overspending combined with no new fundraising caused COMF to use restricted funds for general operating.
- All unrestricted funds are gone, leaving no money for operations.
- Restricted funds need to be repaid.

FUTURE SCHOLARSHIPS

- ◉ Funds are intact and scholarships will be distributed this year.
- ◉ Next Scholarship Award Ceremony scheduled for 5/22/13.

AUDIT

- ⦿ Financial controls lacking
- ⦿ The Foundation should have an operating budget that reflects actual activity; amendments to the budget should be approved by the finance committee and the board and documented in the minutes; and management should not disperse funds that do not agree with the budgetary plan adopted by the board.

NEED TO STANDARDIZE DOCUMENTATION

- ◉ The Foundation should insure when funds are donated that a standardized document is used.

AUDIT MATERIAL WEAKNESSES

- Accounting trial balance did not include all expenses and related payables, requiring an adjustment to the financial statement.
- \$85,455 in expenses should have been accrued in FY 2012, but they were recorded in FY 2013.
- FY 2012 expenditures of restricted funds to support ongoing operations was \$329,094. As of 12/31/12, the total encroachment was \$464,464.

AUDIT SIGNIFICANT DEFICIENCIES

- Unable to find 11 donor letters. Restricted purpose had been documented in previous transactions consistently, but original donor letter could not be found.
- Documentation of donor intent was not standardized and kept current.

MANAGEMENT PLAN TO ADDRESS AUDIT

- ◉ Protect remaining restricted funds to insure they will be spent for restricted purposes.
- ◉ Ex-officios will act in consultation with and as directed by the Office of the California Attorney General (AG).

MANAGEMENT PLAN

- ◉ Seek assistance from COM to make up the deficit in grant funding necessary to fulfill terms of the grants. Must be approved by trustees.
- ◉ Develop short and long term plans in consultation with trustees to mitigate potential consequences to district programs.
- ◉ Identify potential methods of repaying restricted funds.
- ◉ Close depleted program accounts and permanently discontinue Foundation's custodial and management role of those accounts.

MANAGEMENT PLAN

- ◉ COM will assume responsibility for future fundraising for college programs, establishing new program accounts, and assuming all management and accounting responsibilities.
- ◉ NOTE: COM's newly formed Advancement Office has raised to date \$349,660 for programs and scholarships.

MANAGEMENT PLAN

- Explore options with AG for management of funds held by COMF with consideration to transfer assets to an appropriate entity and the possibility of dissolving and winding up the Foundation.

STEPS TO MITIGATE LOSSES

- Prioritize critical COM program needs, and develop short and long term plans to raise funds for program needs
- Work with COM trustees to identify and gain approval for methods to pay back grant funds and to identify funds for critical short-term COM program needs.
- COM Advancement Office to assume responsibility for future fundraising
- Work with AG office to determine legal recourse

FURTHER DETAILS OF CAUSES OF SITUATION

FURTHER DETAIL OF OVERSPENDING

- ◉ Extensive use of high-priced attorneys and consultants
- ◉ Legal fees:
 - ◉ Raghianti Freitas \$73,917
 - ◉ Adler Colvin \$62,284
 - ◉ Vogl Merredith \$5,000 (insurance deductible)
 - ◉ Sub-Total \$141,201

LEGAL FEES WERE FOR:

- ◉ Extensive advice about Board functioning
- ◉ Many meetings with various board members
- ◉ Employment agreements, employee severance agreements, employee terminations
- ◉ Research about assuring that the ex-officios did not have a vote
- ◉ Communication with the Attorney General's office
- ◉ Response to news articles
- ◉ Response to COM's request for return of funds
- ◉ Research on documentation of donor intent
- ◉ Exploring options with Marin Community Foundation (MCF)
- ◉ Exploring dissolution of Foundation
- ◉ Development of resignation plan
- ◉ Misc. other

OTHER UNBUDGETED/OVERSPENT

- \$29,272 KPMG internal review (no audit)
- \$9,466 Van Erp tax accounting
- \$61,521 Netzel Grigsby management consulting (May-September, 2012)
- \$42,044 contractors to do accounting (not the audit)

OTHER UNBUDGETED OR OVERSPENT LINE ITEMS

- ◉ \$57,517 employee severance and close-out expenses
- ◉ \$10,000 Eastis moving expenses
- ◉ \$18,875 Eastis salary
- ◉ \$1,625 web page
- ◉ \$1,574 computer equipment
- ◉ \$3,568 IT consulting
- ◉ \$15,000 off site lease, bank charges, supplies, misc.

ANALYSIS OF WHAT HAPPENED

- ◉ Internal COMF struggles
- ◉ Between board members
- ◉ Between board and staff
- ◉ Six COMF board members resigned in protest of control and direction of board officers
- ◉ Attorney used extensively by one faction of the board, without consent of all
- ◉ After new board members installed, long-time ED resigned effective 2/23/12
- ◉ New ED hired 2/27/12, then fired two months later after receiving \$10,000 in moving expenses

ANALYSIS

- ◉ Long-time bookkeeper (who always had clean audits) discharged. A new contractor was hired at much greater expense.
- ◉ No financial reports generated while unbudgeted spending increased
- ◉ After Eastis termination, a management consulting firm was engaged. Compensation far greater than previous director expenses.
- ◉ \$12K per month - not full time.

POSSIBLE MOTIVATIONS

- 9/7/11 E-mail from Hill to Sternberger states:
- “...I strongly suspect that if a program audit was done of COMF, we would find that ME, while maybe not directly pocketing funds (or maybe she did) has used funds for whatever purposes she so desired for her own advancement and benefit, ultimately for the glorification of ME...”
- “...She could be negotiated out if we could obtain evidence of malfeasance...”

CONTINUED...

- ⦿ NOTE: The audit did not identify any basis to substantiate these allegations.

KPMG

- ◉ Initially requested to look into wrongdoing by former staff
- ◉ Focus shifted to allegations regarding then current board member mismanagement.
- ◉ KPMG did not perform an audit, because there were no financial statements to audit.
- ◉ KPMG recommended another accountant be hired to complete the financial statements.
- ◉ They issued a brief memo stating only that in interviews with Elliott and Shiner, the two indicated they did not think there had been theft or fraud.

KPMG

- ◉ Suggested further study of: Foundation expenditures, source of funds for admin, (restricted vs unrestricted), and adherence to endowment fund agreements

COMF ALLEGATIONS

- ◉ COMF Board repeatedly claimed that COM would not honor donor intent if they transferred back the program funds as requested.
- ◉ Concerned that overspending would deplete these funds, COM made several requests that the funds be transferred back.
- ◉ NOTE: Program funds had been raised for specific COM programs by COM faculty and former COMF staff. COM was charged a fee to manage the funds.

COMF ALLEGATIONS

- ◉ 6/29/12 communication from COM legal counsel to COMF counsel states “... the district fully intends to comply with any documented trust restrictions whether related to spending and endowments, or uses, that apply to the funds...”
- ◉ The assurance was repeated in subsequent e-mails and phone conversations.
- ◉ Also alleged COM would use restricted donor funds for its capital projects, which would have been illegal and was never considered at any time.

COMF COMPLAINTS

- ⦿ Concern about practice of “borrowing” from restricted funds to cover admin expenses and then repaying the funds at fiscal year end.
- ⦿ According to the auditor, it is not an uncommon practice for foundations to comingle funds and track their use through fund accounting. Cash flow is often managed this way. Prior to 2012, audits confirmed that by year end, all funds were properly accounted.

CONTINUED...

- ⦿ In spite of their concern, the COMF board “borrowed “ \$464,464 from the restricted funds to cover administrative overspending.
- ⦿ The serious problem is that so much money was “borrowed” that it could not be paid back and it also depleted all funds for future operations.

WHAT WAS BEHIND THE MASS RESIGNATIONS

- 8/1/12 memo from legal counsel to COMF board (excluding the ex-officios) recommends resigning and leaving just the ex-officios on the board.
- “...While the College’s ex-officio directors have not been voting members of the board ...Section 5047...defines that ex-officios are in fact voting members...”
- “...The Foundation amended its Bylaws to address this discrepancy, but did not...realize it would also need to amend its Articles of Incorporation... conflicts between the Articles and Bylaws are controlled by the Articles; therefore [the ex-officios] are still voting members with fiduciary duties...”

CONTINUED...

- It then specifies a long to-do list which it claims is now the responsibility of the ex-officios.
- It recommends the board affirm these duties for the ex-officios.
- Note: This was all done without input, vote, or consent of the ex-officios.
- Says AG has been asked to closely monitor COMF board's serious concerns about ex-officios not honoring their fiduciary duties and obligation of meeting donor intent. It will also request that the AG and a court review the Foundation.

CONTINUED...

- ◉ Recommends those directors who resigned on 9/17/12 contact AG office, have “friendly donors” demand immediate transparency from the ex-officios regarding donor intent, and follow-up with the IJ and the AG if the ex-officios “shirk their responsibilities.”

CONTINUED...

- “This course of action is essentially the use of a blunt sword in dealing with the current dispute, but it can have an elegant result...because we can place all of the issues...on the ex-officios shoulders... and transfer legal responsibility onto the College’s president and president of the Board of Trustees...”

COMF TRACKING OF EXPENSES

- ◉ 2/23/12 minutes of COMF board meeting state “...Finance Committee reports that there is a severe imbalance of income vs ongoing expenses. The Foundation cannot continue to operate this way...”
- ◉ 3/23/12 minutes state “...We have never raised more than 65 K per annum. This year it has been 32K. Expenditures have risen and various practices must be reviewed...COMF has had to liquidate \$500,000 to cover interfund transfers. The problem is the investment fund generates \$150K to \$160K, which is not enough to cover administrative costs...”

CONTINUED...

- ◉ 9/21/12 Letter from Deedy to Conti and Coon states “...Careful review of the financials of COMF will show there are NO EXCESS funds for operation of the foundation - all funds are either Restricted or Endowment funds...”
- ◉ COMF had a confidential meeting with MCF to explore future options.
- ◉ Attorneys researched dissolution as well.

CONCERNS RAISED BY OUTSIDE GROUPS

- Serious concerns about overspending and unauthorized spending were repeatedly raised by COM trustees, faculty, students, donors, and the six COMF board members who resigned several months before the mass resignations. Concerns also mentioned in news articles.
- COMF board members (who resigned several months before the mass resignation) requested their financial concerns be read into the meeting minutes, but they were refused.

UNANSWERED QUESTIONS

- How could the COMF board not have known the overspending was so severe, and why didn't it act to remedy the situation?
- Why didn't they follow standard financial monitoring procedures?

CONCLUSIONS

- ◉ Nearly a half million dollars of restricted funds spent inappropriately for extraordinary administrative expenses.
- ◉ No money left for ongoing expenses.
- ◉ \$3.8 million of restricted and endowed funds left intact in investment accounts.
- ◉ Program funds depleted by overspending.
- ◉ Scholarship funds left whole. Scholarship awards to be made 5/22/13.
- ◉ Grant funds need to be repaid.

CONCLUSIONS

- ◉ COM will actively explore alternative sources of funds for critical student support.
- ◉ COM internal Advancement Office proceeding to raise additional funds.
- ◉ Management plan to be implemented in the near future.
- ◉ Includes possible transfer of funds to other appropriate entity and possible dissolution of organization.
- ◉ It is necessary to obtain further information in order to implement a plan for the future of COMF.

CONCLUSIONS

- Management Plan will be implemented in consultation with and as directed by the California Attorney General's Office.